

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 14 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 persons less than twenty-one years of age.
- 4 Page 3, after line 16, begin a new paragraph and insert:
- 5 "SECTION 3. IC 20-8.1-4-25.5 IS ADDED TO THE INDIANA
- 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 7 [EFFECTIVE JULY 1, 2001]: **Sec. 25.5. (a) This section does not**
- 8 **provide an exception to the hours a child is permitted to work**
- 9 **under section 20 of this chapter.**
- 10 **(b) It is unlawful for a person, firm, limited liability company,**
- 11 **or corporation to permit a child who is:**
- 12 **(1) less than eighteen (18) years of age; and**
- 13 **(2) employed by the person, firm, limited liability company, or**
- 14 **corporation;**
- 15 **to work in an establishment that is open to the public between the**
- 16 **hours of 10 p.m. and 6 a.m., unless the child is accompanied during**
- 17 **those hours by another employee who is at least eighteen (18) years**
- 18 **of age.**
- 19 SECTION 4. IC 20-8.1-4-31, AS AMENDED BY P.L.234-1999,
- 20 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 21 JULY 1, 2001]: Sec. 31. (a) A person, firm, limited liability company,
- 22 or corporation that violates this chapter may be assessed the following
- 23 civil penalties by the department of labor:
- 24 (1) For an employment certificate violation under section 1 or 13

of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for a second violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(2) For a posting violation under section 23 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(3) For a termination notice violation under section 11 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(4) For an hour violation of not more than thirty (30) minutes under section 20 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

- (D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:
- (i) is identified in an inspection subsequent to the inspection under clause (C); and
  - (ii) occurs not more than two (2) years after a prior violation.
- (5) For an hour violation of more than **thirty** (30) minutes under section 20 of this chapter, the following:
- (A) A warning letter for any violations identified during an initial inspection.
  - (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
  - (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
  - (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
    - (i) is identified in an inspection subsequent to the inspection under clause (C); and
    - (ii) occurs not more than two (2) years after a prior violation.
- (6) For a hazardous occupation violation under section 25 **or 25.5** of this chapter, the following:
- (A) A warning letter for any violations identified during an initial inspection.
  - (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
  - (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
  - (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
    - (i) is identified in an inspection subsequent to the inspection under clause (C); and
    - (ii) occurs not more than two (2) years after a prior violation.
- (7) For an age violation under section 21 or 21.5 of this chapter, the following:
- (A) A warning letter for any violations identified during an initial inspection.
  - (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
  - (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
  - (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
    - (i) is identified in an inspection subsequent to the inspection under clause (C); and
    - (ii) occurs not more than two (2) years after a prior violation.
- (8) For each minor employed in violation of section 21(b) of this chapter, the following:

- 1 (A) A warning letter for any violations identified during an  
 2 initial inspection.  
 3 (B) One hundred dollars (\$100) per instance for each violation  
 4 identified in a subsequent inspection.  
 5 (C) Two hundred dollars (\$200) per instance for a third  
 6 violation that is identified in a subsequent inspection.  
 7 (D) Four hundred dollars (\$400) per instance for a fourth or  
 8 subsequent violation that:  
 9 (i) is identified in an inspection subsequent to the inspection  
 10 under clause (C); and  
 11 (ii) occurs not more than two (2) years after a prior violation.  
 12 (b) A civil penalty assessed under subsection (a):  
 13 (1) is subject to IC 4-21.5-3-6; and  
 14 (2) becomes effective without a proceeding under IC 4-21.5-3  
 15 unless a person requests an administrative review not later than  
 16 thirty (30) days after notice of the assessment is given.  
 17 (c) For purposes of determining whether a second violation has  
 18 occurred when assessing a civil penalty under subsection (a), a first  
 19 violation expires one (1) year after the date of issuance of a warning  
 20 letter by the department of labor under subsection (a).  
 21 (d) For purposes of determining recurring violations of this section,  
 22 each location of an employer shall be considered separate and distinct  
 23 from another location of the same employer.  
 24 (e) There is established an employment of youth fund for the  
 25 purpose of educating affected parties on the purposes and contents of  
 26 this chapter and the responsibilities of all parties under this chapter.  
 27 One-half (1/2) of the fund each year shall be used for the purpose of the  
 28 education provision of this subsection. This portion of the fund may be  
 29 used to award grants to provide educational programs. The remaining  
 30 one-half (1/2) of the fund shall be used each year for the expenses of  
 31 hiring and salaries of additional inspectors to enforce this chapter under  
 32 section 29 of this chapter. All inspectors hired to enforce this chapter  
 33 shall also be available to educate affected parties on the purposes and  
 34 contents of this chapter and the responsibilities of all parties under this  
 35 chapter. The fund shall be administered by the department of labor.  
 36 The expenses of administering the fund shall be paid from money in  
 37 the fund. The treasurer of state shall invest the money in the fund not  
 38 currently needed to meet the obligations of the fund in the same  
 39 manner as other public funds may be invested. Interest that accrues  
 40 from these investments shall be deposited in the fund. Money in the  
 41 fund at the end of a state fiscal year does not revert to the state general  
 42 fund. Revenue received from civil penalties under this section shall be  
 43 deposited in the employment of youth fund.  
 44 SECTION 5. IC 22-3-6-1, AS AMENDED BY P.L.31-2000,  
 45 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 46 JULY 1, 2001]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the

1 context otherwise requires:

2 (a) "Employer" includes the state and any political subdivision, any  
3 municipal corporation within the state, any individual or the legal  
4 representative of a deceased individual, firm, association, limited  
5 liability company, or corporation or the receiver or trustee of the same,  
6 using the services of another for pay. A parent or a subsidiary of a  
7 corporation or a lessor of employees shall be considered to be the  
8 employer of the corporation's, the lessee's, or the lessor's employees for  
9 purposes of IC 22-3-2-6. If the employer is insured, the term includes  
10 the employer's insurer so far as applicable. However, the inclusion of  
11 an employer's insurer within this definition does not allow an  
12 employer's insurer to avoid payment for services rendered to an  
13 employee with the approval of the employer. The term also includes an  
14 employer that provides on-the-job training under the federal School to  
15 Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth  
16 in IC 22-3-2-2.5.

17 (b) "Employee" means every person, including a minor, in the  
18 service of another, under any contract of hire or apprenticeship, written  
19 or implied, except one whose employment is both casual and not in the  
20 usual course of the trade, business, occupation, or profession of the  
21 employer.

22 (1) An executive officer elected or appointed and empowered in  
23 accordance with the charter and bylaws of a corporation, other  
24 than a municipal corporation or governmental subdivision or a  
25 charitable, religious, educational, or other nonprofit corporation,  
26 is an employee of the corporation under IC 22-3-2 through  
27 IC 22-3-6.

28 (2) An executive officer of a municipal corporation or other  
29 governmental subdivision or of a charitable, religious,  
30 educational, or other nonprofit corporation may, notwithstanding  
31 any other provision of IC 22-3-2 through IC 22-3-6, be brought  
32 within the coverage of its insurance contract by the corporation by  
33 specifically including the executive officer in the contract of  
34 insurance. The election to bring the executive officer within the  
35 coverage shall continue for the period the contract of insurance is  
36 in effect, and during this period, the executive officers thus  
37 brought within the coverage of the insurance contract are  
38 employees of the corporation under IC 22-3-2 through IC 22-3-6.

39 (3) Any reference to an employee who has been injured, when the  
40 employee is dead, also includes the employee's legal  
41 representatives, dependents, and other persons to whom  
42 compensation may be payable.

43 (4) An owner of a sole proprietorship may elect to include the  
44 owner as an employee under IC 22-3-2 through IC 22-3-6 if the  
45 owner is actually engaged in the proprietorship business. If the  
46 owner makes this election, the owner must serve upon the owner's

1 insurance carrier and upon the board written notice of the  
2 election. No owner of a sole proprietorship may be considered an  
3 employee under IC 22-3-2 through IC 22-3-6 until the notice has  
4 been received. If the owner of a sole proprietorship is an  
5 independent contractor in the construction trades and does not  
6 make the election provided under this subdivision, the owner  
7 must obtain an affidavit of exemption under IC 22-3-2-14.5.

8 (5) A partner in a partnership may elect to include the partner as  
9 an employee under IC 22-3-2 through IC 22-3-6 if the partner is  
10 actually engaged in the partnership business. If a partner makes  
11 this election, the partner must serve upon the partner's insurance  
12 carrier and upon the board written notice of the election. No  
13 partner may be considered an employee under IC 22-3-2 through  
14 IC 22-3-6 until the notice has been received. If a partner in a  
15 partnership is an independent contractor in the construction trades  
16 and does not make the election provided under this subdivision,  
17 the partner must obtain an affidavit of exemption under  
18 IC 22-3-2-14.5.

19 (6) Real estate professionals are not employees under IC 22-3-2  
20 through IC 22-3-6 if:

21 (A) they are licensed real estate agents;

22 (B) substantially all their remuneration is directly related to  
23 sales volume and not the number of hours worked; and

24 (C) they have written agreements with real estate brokers  
25 stating that they are not to be treated as employees for tax  
26 purposes.

27 (7) A person is an independent contractor in the construction  
28 trades and not an employee under IC 22-3-2 through IC 22-3-6 if  
29 the person is an independent contractor under the guidelines of  
30 the United States Internal Revenue Service.

31 (8) An owner-operator that provides a motor vehicle and the  
32 services of a driver under a written contract that is subject to  
33 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor  
34 carrier is not an employee of the motor carrier for purposes of  
35 IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be  
36 covered and have the owner-operator's drivers covered under a  
37 worker's compensation insurance policy or authorized  
38 self-insurance that insures the motor carrier if the owner-operator  
39 pays the premiums as requested by the motor carrier. An election  
40 by an owner-operator under this subdivision does not terminate  
41 the independent contractor status of the owner-operator for any  
42 purpose other than the purpose of this subdivision.

43 (9) A member or manager in a limited liability company may elect  
44 to include the member or manager as an employee under  
45 IC 22-3-2 through IC 22-3-6 if the member or manager is actually  
46 engaged in the limited liability company business. If a member or

manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen (17) years of age, **and, for purposes of IC 20-8.1-4-25.5, an individual who has not reached eighteen (18) years of age.**

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-8.1-4-25 or **IC 20-8.1-4-25.5**, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-10.1-6-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks

1 immediately preceding the date of injury, divided by fifty-two (52),  
 2 except as follows:

3 (1) If the injured employee lost seven (7) or more calendar days  
 4 during this period, although not in the same week, then the  
 5 earnings for the remainder of the fifty-two (52) weeks shall be  
 6 divided by the number of weeks and parts thereof remaining after  
 7 the time lost has been deducted.

8 (2) Where the employment prior to the injury extended over a  
 9 period of less than fifty-two (52) weeks, the method of dividing  
 10 the earnings during that period by the number of weeks and parts  
 11 thereof during which the employee earned wages shall be  
 12 followed, if results just and fair to both parties will be obtained.  
 13 Where by reason of the shortness of the time during which the  
 14 employee has been in the employment of the employee's employer  
 15 or of the casual nature or terms of the employment it is  
 16 impracticable to compute the average weekly wages, as defined  
 17 in this subsection, regard shall be had to the average weekly  
 18 amount which during the fifty-two (52) weeks previous to the  
 19 injury was being earned by a person in the same grade employed  
 20 at the same work by the same employer or, if there is no person so  
 21 employed, by a person in the same grade employed in the same  
 22 class of employment in the same district.

23 (3) Wherever allowances of any character made to an employee  
 24 in lieu of wages are a specified part of the wage contract, they  
 25 shall be deemed a part of his earnings.

26 (4) In computing the average weekly wages to be used in  
 27 calculating an award for permanent impairment under  
 28 IC 22-3-3-10 for a student employee in an approved training  
 29 program under IC 20-10.1-6-7, the following formula shall be  
 30 used. Calculate the product of:

31 (A) the student employee's hourly wage rate; multiplied by

32 (B) forty (40) hours.

33 The result obtained is the amount of the average weekly wages for  
 34 the student employee.

35 (e) "Injury" and "personal injury" mean only injury by accident  
 36 arising out of and in the course of the employment and do not include  
 37 a disease in any form except as it results from the injury.

38 (f) "Billing review service" refers to a person or an entity that  
 39 reviews a medical service provider's bills or statements for the purpose  
 40 of determining pecuniary liability. The term includes an employer's  
 41 worker's compensation insurance carrier if the insurance carrier  
 42 performs such a review.

43 (g) "Billing review standard" means the data used by a billing  
 44 review service to determine pecuniary liability.

45 (h) "Community" means a geographic service area based on zip  
 46 code districts defined by the United States Postal Service according to



1 the following groupings:

- 2 (1) The geographic service area served by zip codes with the first
  - 3 three (3) digits 463 and 464.
  - 4 (2) The geographic service area served by zip codes with the first
  - 5 three (3) digits 465 and 466.
  - 6 (3) The geographic service area served by zip codes with the first
  - 7 three (3) digits 467 and 468.
  - 8 (4) The geographic service area served by zip codes with the first
  - 9 three (3) digits 469 and 479.
  - 10 (5) The geographic service area served by zip codes with the first
  - 11 three (3) digits 460, 461 (except 46107), and 473.
  - 12 (6) The geographic service area served by the 46107 zip code and
  - 13 zip codes with the first three (3) digits 462.
  - 14 (7) The geographic service area served by zip codes with the first
  - 15 three (3) digits 470, 471, 472, 474, and 478.
  - 16 (8) The geographic service area served by zip codes with the first
  - 17 three (3) digits 475, 476, and 477.
  - 18 (i) "Medical service provider" refers to a person or an entity that
  - 19 provides medical services, treatment, or supplies to an employee under
  - 20 IC 22-3-2 through IC 22-3-6.
  - 21 (j) "Pecuniary liability" means the responsibility of an employer or
  - 22 the employer's insurance carrier for the payment of the charges for each
  - 23 specific service or product for human medical treatment provided
  - 24 under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or
  - 25 less than the charges made by medical service providers at the eightieth
  - 26 percentile in the same community for like services or products."
  - 27 Renumber all SECTIONS consecutively.
- (Reference is to ESB 14 as printed April 6, 2001.)

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Representative Cheney